(6)

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM: **Hon'ble Shri V.K. SHRIVASTAVA &**
Hon'ble Shri S.K. AGNIHOTRI, J J.

CRIMINAL APPEAL NO.804/1989

State of Chhattisgarh

Vs

Dharmendra Mourya and another.

JUDGMENT FOR CONSIDERATION

Sd//-
V.K.Shrivastava
Judge

Hon'ble Shri S.K. Agnihotri, J.

I agree

Sd/-
Satish K. Agnihotri
Judge

Post for 23/12/2005

Sd/-
V.K. Shrivastava
Judge

23/12/2005

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Division Bench)

CORAM : Hon'ble Shri Vijay Kumar Shrivastava & Hon'ble Shri Satish Kumar Agnihotri, JJ.

Criminal Appeal No.804 of 1989

Appellant : **State of Chhattisgarh**

Versus

Respondents (Accused) :

1. **Dharmendra Mourya,** aged 23 years, s/o Inder Kachhi
2. **Munna Lohar alias Devendra Kumar,** aged 26 years, s/o Surendra Kumar Vishvakarma

Both are r/o Diprapara, Bilaspur, Police Station City Kotwali, Bilaspur (M.P.)

Mr. Akhil Mishra with Mr. Ravindra Agrawal, Panel Lawyers for the appellant/State.

Mr. Arun Kochar, counsel for the respondents.

J U D G M E N T

(Delivered on 23 /12/2005)

Per Vijay Kumar Shrivastava, J.

This appeal has been directed against the judgment dated 25-8-1988 passed by IInd Additional Sessions Judge,

Bilaspur in Sessions Trial No.30/88, whereby learned IInd Additional Sessions Judge has acquitted the accused/respondent No.1 with the offence punishable under Sections 302 of IPC for committing murder of Balwant Singh and acquitted the accused/respondent No.2 for the commission of offence of murder of Balwant Singh punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. Facts essentially required for disposal of this appeal in brief compass are that, Jai Singh and Smt.Gyan Kaur, who are the father and mother of the deceased Balwant Singh, were living in a rented accommodation owned by Kalicharan, who is the grand father of respondent No.1, Dharmendra Mourya. The relationship of landlord and tenant was old but for the last 4 years there was dispute between landlord and tenant and as a result thereof various proceedings were initiated against both the parties. Owing to this, respondent No.1, Dharmendra Mourya developed ill-will and enmity against Balwant Singh. On 18-6-1987, Balwant Singh along with his father and mother was in the house. At about 4.30 P.M. Balwant Singh came out of the house for collecting dried cowdung. Smt. Gyan Kaur and Jai Singh were remained inside the house. When Balwant Singh hardly had moved few steps from his house, he was intercepted and got encircled by the respondents. Respondent No.2, Munna Lohar alias Devendra Kumar caught hold of Balwant Singh from back and respondent No.1, Dharmendra Mourya stabbed him with a sharp edged weapon Gupti (one of the kinds of knife). Balwant Singh raised alarm. On hearing the cries, Smt. Gyan Kaur followed by her husband Jai Singh reached to the place of occurrence. Smt. Gyan Kaur and Jai Singh saw the

respondents running away from the place of incident. Balwant Singh, who was injured but alive, stated that Dharmendra Mourya and Munna Lohar alias Devendra Kumar have assaulted him by means of a Gupti. Smt. Gyan Kaur took Balwant Singh to Government Hospital in a Rickshaw. The doctor, after examining Balwant Singh, declared him dead.

3. Medical Officer sent information to Station House Officer, City Kotwali, Bilaspur about the death of Balwant Singh at 7.45 P.M. On basis of that information, Merg intimation was recorded and N.R.Arya, Sub-Inspector of Police went to Government Hospital, Bilaspur, where Smt. Gyan Kaur was present, who lodged an F.I.R. N.R.Arya, Sub-Inspector recorded the same as Dehati Nalisi. On 19-6-1987, Town-Inspector Ratan Singh Thakur prepared a Panchnama of the dead body and sent the dead body for autopsy. Dr. S.K.Tiwari conducted post mortem on the body of the deceased Balwant Singh. On examination, he found one stab wound of the size of 3 cms. X 1 cm. x 6 cms deep present on right side of liver. Internal examination was also done by him. He opined that the deceased Balwant Singh died as a result of intensive bleeding and shock due to stab wound on abdomen wall resulting into liver injury. On memorandum statement and at the instance of respondent No.1, Dharmendra Mourya, Gupti and one Bushirt were recovered and seized from him. Fullpant from the body of respondent No.1, Dharmendra Mourya was removed and seized along with shoes, socks and his finger nail. The seized Gupti was sent to Medical Officer for examination and opinion. Dr. S.K.Tiwari, after examining the Gupti (Knife) opined that the injury found on the body of the deceased Balwant Singh could have been caused by

the seized Gupti. To support the factum of ill-will and animosity, copies of various reports and judgment of Civil Court were collected and seized and also obtained site plan prepared by Patwari. Witnesses were examined under Section 161 of the Code of Criminal Procedure. After completion of the investigation, a charge-sheet against the respondents was led in the Court of Chief Judicial Magistrate, Bilaspur, who committed the case to the Court of Session for trial.

4. Learned trial Court framed charges under Section 302 of the Indian Penal Code against respondent No.1, Dharmendra Mourya and Section 302 read with Section 34 of the Indian Penal Code against respondent No.2, Munna Lohar alias Devendra Kumar. Charges were read over and explained to the respondents, who abjured the guilt. Their defence is that they are innocent. They have been falsely implicated in the case.

5. Learned trial Court disbelieved the statement of P.W.-1, Smt. Gyan Kaur and P.W.-2, Jai Singh, and held that the incident was not reported immediately, distance shown by the Patwari in spot map cast doubt on the version of Smt. Gyan Kaur and Jai Singh who witnessed the respondents running away from the spot, articles seized have been found in open compound, respondents have not been arrested in the night but were arrested on the next date. On the aforesaid grounds, the trial Court acquitted both the respondents from the offences charged against them.

6. The scope of appeal against acquittal has been considered by Hon'ble the Apex Court in the cases of ***State of***

Punjab vs. Ajaib Singh and others, reported in 2004 (7) SBR 145, Hemraj and another vs. State of Punjab, reported in 2003 (11-12) SBR 378, Preetamnath and others vs. State of Punjab, reported in 2002 (9) SBR 345, Thanedar Singh vs. State of M.P., reported in 2002 (2) SBR 368, Shailendra Pratap and another vs. State of U.P., reported in 2003 (1) SBR 634, Rajeevan and another vs. State of Kerala, reported in 2003 (4) SBR 417, Bhimsingh vs. State of Haryana, reported in 2003 (2) SBR 367.

7. In a nutshell, the law laid down by the Apex Court is that in appeal against acquittal appellate Court can re appreciate the evidence to ascertain whether the view taken by the trial Court is plausible and based on good and weighty reason or the same suffers from voice of perversity and in case the appellate Court comes to conclusion that the view taken by the trial Court is perverse or is not based on record, it can disturb the order of acquittal and substitute its own view.

8. Learned Court below considering the evidence of PW/8 Dr. S.K. Tiwari, Medical officer and other witnesses held that Balwant Singh was dead, however, did not care to decide as to whether the death was homicidal, accidental or natural. PW/8 Dr. S.K. Tiwari in his statement has deposed that on 19/06/1984 he conducted the postmortem on the body of Balwant Singh. He found one stab wound 3 cm x 1 cm on the anterior abdomen just below costal margin, 4 cm lateral to mid line. On internal examination, he also found stab wound 3 cm x 1 cm x 6 cm deep on the right lobe of liver. He has further deposed that injury was

anti mortem which was sufficient to cause death. In his opinion the cause of death was internal bleeding and shock due to stab wound on abdomen wall resulting into liver injury. His report is Ex.P/18. His evidence has not been challenged in cross-examination and nothing has been brought to discredit his evidence. Therefore, from his evidence and his report Ex.P/18, it was proved that the death of Balwant Singh was homicidal in nature.

9. Learned trial Court having found the fact proved that the respondents and parents of the deceased were in inimical terms has held that due to that animosity the plausibility of false implication cannot be ruled out. Ex.P/2 is the report lodged by Smt. Gyan Kaur (PW/1) on 30/01/1985 at Police Station City Kotwali, Bilaspur. She has lodged report against Prakash, Kalicharan and Parwati to the effect that they assaulted her with Chappals. Report (Ex.P.3) was lodged by Jaisingh, father of the deceased on 14/09/1983 at Police Station City Kotwali, Bilaspur, against Kalicharan, his son and other family members. In this report, complaint has been made that Kalicharan, in order to recover possession from Jaisingh had quarreled against him and had thrown his domestic goods from his house. Ex.P/4 is the report lodged by Jaisingh (PW/2) at Police Station City Kotwali, Bilaspur on 29/01/1983 against Anoop, Inder and Dharmendra Mourya stating that in order to evict him from the house they quarreled and threatened. Ex.P/5 is the copy of judgment in Civil Suit No. 68-A/83 (Kalicharan Vs. Jaisingh), passed on 21/07/1983 whereby ex parte decree of eviction has been passed against Jaisingh. Ex.P/10, P/11 and P/12 are the copies of Sanha entries in support of reports Ex.P/2, P/3 and P/4. These reports were proved by the

witnesses PW/1 – Gyan Kaur and PW/2 – Jaisingh and Sanha entries Ex.P/10 to P/12 have been proved by Radheshyam (PW/5). From these reports it was established that before the incident the relation between Gnayn Kaur, Jaisingh (tenants) and Kalicharan (landlord) and his grandson Dharmendra Mourya was inimical. PW/1 Gyan Kaur and PW/2 Jaisingh are the parents of Balwant Singh and Dharmendra Mourya is the grand son of Kalicharan. Although plea of enmity is a double edged weapon, but from totality of the evidence it has to be determined whether the incident took place as a result of enmity or due to enmity respondents have been falsely implicated.

10) Ex.P/13 is the memorandum statement of respondent-Dharmdendra Mourya. Ratansingh Thakur (PW/17) in his statement has deposed that on 19/06/1987 respondent Dharmendra Mourya who was in custody gave a memorandum statement that he has concealed Gupti underground earth in vegetable field of Krishna Kumar Verma and has concealed his Bushirt in water in the drainage. His statement is Ex.P/13.

Salim Khan (PW/6) and Sudhir Kumar Tripathi (PW/7) are the witnesses in whose presence the memorandum statement (Ex.P/13) of respondent Dharmendra Mourya was recorded, but both these witnesses have although admitted their signatures in Ex.P/13, but denied the contents therein. Both the witnesses have been declared hostile. Both these witnesses in their cross examination have admitted that they have not signed on any blank paper. Therefore, it will be presumed that the memorandum statement was recorded in their presence, but due to some unknown reasons they did not corroborate the statement. In cross

examination of witness PW/17 Ratansingh Thakur nothing has been elicited so as to disbelieve his statement. Therefore, the statement of PW/17 Ratansingh Thakur is acceptable and it was proved that the respondent Dharmendra Mourya in his memorandum statement stated that he has concealed the Gupti under earth in vegetable field of Krishna Kumar Verma and concealed his Bushirt underwater in drainage.

11. Ratansingh Thakur (PW/17) in his statement has deposed that the Respondent Dharmendra Mourya took them to place where he concealed Gupti and from that place he discovered Gupti. He seized Gupti and earth vide Ex.P/14. Respondent Dharmendra Mourya also recovered Bushirt and the same was seized vide Ex.P/15. In his cross examination nothing substantial has been brought so as to disbelieve his version although PW/6 Salim Khan and PW/7 Sudhir Kumar Tripathi who were the witnesses of the recovery did not support the same. Both these witnesses were declared hostile. They admitted that they have signed those documents and they have not signed on any blank paper. Therefore, it will be presumed that both these witnesses were present when the recovery took place and in their presence Gupti & Bushirt were recovered and documents have been prepared, but due to some unknown reasons they have willfully suppressed the truth.

12. From Ex.P/14 and P/15, it is established that on memorandum statement of Respondent Dharmendra Mourya, Gupti (knife) has been recovered which was concealed in ground where creepers of "Dotka" vegetables was grown, knife was inside

the earth and only its handle was visible above the ground and Bushirt of the appellant was recovered from the water of drainage near Bashrambush. Ratansingh Thakur (PW/17) in his cross examination admitted that from where Gupti has been recovered that vegetable Badi is fenced from all the sides. There is a way from the Badi which leads to the house of the owner of the Badi. Although Badi is a open ground, but it is surrounded by fencing all around and Gupti was not lying there in visible condition, but was concealed under earth keeping edged portion inside the earth. Therefore, it cannot be kept by any one as it was concealed by respondent Dharmendra Mourya, therefore, soon after the incident he got it recovered from the Badi. Apart from that, the said vegetable Badi was not an open place, accessible for all but a place fenced from all sides. The articles were not lying openly but were found concealed.

13. The incident took place at 4.30 p.m. on 18/06/1984. Overwhelming evidence is on record that soon after the incident, deceased Balwant Singh was taken directly to District Hospital by her mother Smt. Gyan Kaur where Medical Officer examined Balwant Singh and declared him dead. Report (Ex.P/26) has been proved by PW/14 M.A. Khan, sent by Medical Officer to Station House Officer, City Kotwali, Bilaspur. The said intimation was sent on 18/06/1984 at 7.45 p.m. Dehati Nalsi (Ex.P/1) was lodged by Smt. Gyan Kaur (PW/1) to Police at District Hospital, Bilaspur which was proved by PW/16 N.R. Arya, Sub Inspector. The report was lodged on 18/06/1984 at 20.30 hours. It means the report was lodged around four hours after the incident. When Balwant Singh received injury he was taken to District Hospital by his

mother and Medical Officer declared him dead after examining the injured and sent intimation to that effect to Police Station. Sub Inspector of Police Station came to Dist. Hospital, Bilaspur and obtained report from Smt. Gyan Kaur. Therefore, the report was lodged promptly and no delay has been caused in lodging the report. Gyan Kaur (PW/1) in her statement has deposed that her husband brought Rickshaw and they put the deceased Balwant Singh in Rickshaw they took him to Dist. Hospital. Although PW/1 Gyan Kaur in her cross-examination has stated that she alone took Balwant Singh to hospital that does not mean that her husband had not gone to hospital to attend his injured son. From the above evidence it was proved that report was lodged promptly and on the basis of surmises and conjectures such report cannot be said to be belated one.

14. PW/1 Gyan Kaur has deposed in her statement that she heard noise raised by her son Balwant Singh that " Ma – Mardala" and on hearing she and her husband rushed to the spot and saw the respondents Dharmendra Mourya and Munna who were after assaulting running from the place of occurrence. They reached Balwant Singh who told them that Dharmendra Mourya and Munna assaulted him and also told them that by Gupti he was assaulted. Soon after the incident she lodged the report i.e., Ex.P/1 wherein she has reported that her son Balwant Singh raised cry Mardala, on hearing the noise she and her husband came out of the house and saw respondents Dharmendra Mourya and Munna running from the place of occurrence. Balwant Singh told them Dharmendra Mourya and Munna stabbed Gupti on his stomach. In Ex.P/1 the word "Ma" is missing and the word "Chaku" (knife) in

place of Gupti (one kind of knife) has been used. Very often people referred Gupti as knife, therefore, the contradiction and omission brought by the respondents is only formal in nature.

15. In cross examination Smt. Gyan Kaur (PW/1) very specifically denied that Balwant Singh pressing his injury by both the hands came and stated that Dharmendra Mourya and Munna came together and after he was caught by Munna, Dharmendra Mourya stabbed knife in his stomach. She has denied portion A to A of Ex.D/1 containing such statement. Ex.D/1 was proved by PW/17 Ratansingh Thakur. In natural course when the said statement was not stated in Ex.P/1, how such a statement could be given by PW/1 Gyan Kaur to Police under Section 161 of the Cr.P.C. Therefore, her denial was true and could not have been disbelieved, if Police in statement under Section 161 of the Cr.P.C., has written such a statement which she has not given for that statement she cannot be held responsible. Apart from that, in that statement also this fact is implicit that both the respondents assaulted Balwant Singh by stabbing knife on his stomach.

16) Jaisingh (PW/2) in his statement has stated that on hearing the noise of his son when he came out of the house, he saw Dharmendra Mourya and Munna running from the place of occurrence and Balwant Singh told him that Dharmendra Mourya and Munna had assaulted him. Ex.D/2 is the statement under Section 161 of the Cr.P.C. proved by PW/17 Ratansingh Thakur. In Ex.D/2 Police has recorded his evidence wherein it has been mentioned that Balwant Singh pressing his injury by both the hands came and stated that Dharmendra Mourya and Munna

together came and after he was caught by Munna, Dharmendra Mourya stabbed knife in his stomach. The witness has specifically narrated in Court that Balwant Singh told him that Dharmendra Mourya and Munna had stabbed him with Gupti. In statement (Ex.D/2) in so many words he did not narrate the said fact, but in his statement this fact is there that Balwant Singh told him regarding causing injury by both the respondents.

17. Upon raising alarm by Balwant Singh and thereafter on hearing the voice, PW/1 Gyan Kaur and PW/2 Jaisingh came out of the house and saw that both the respondents running from the spot is concerned, no contradiction or omission is found in their previous statements. Although the detailed statement written in Ex.D/1 and D/2, were denied by both the witnesses, but both of them have stated that Balwant Singh told that Dharmendra Mourya and Munna assaulted him. PW/1 Gnyan Kuar has also stated that Balwant Singh told her that both the respondents stabbed him by Gupti (knife). Ex.P/1 Dehati Nalsi (FIR) is virtually her previous statement. In that report Smt. Gyan Kaur (PW/1) only reported that Balwant Singh told that Dharmendra Mourya and Munna stabbed knife on his stomach. Therefore, from the above discussion, it is clear that So far as declaration made by Balwant Singh is concerned, substantial narration is available in previous statements of the witnesses.

18. Hon'ble the Apex Court in ***Rizan Vs. State of Chhattisgarh, reported in (2003) 2 Supreme Court Cases 661,*** has held that relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal

the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible. Normal discrepancies in evidence are those which are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be. Material discrepancies are those which are not expected of a normal person. Courts have to label the category into which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do.

19. In the instant case, both the witnesses PW/1 Gyan Kaur and PW/2 Jaisingh are mother and father of the deceased. Soon after the incident, report was lodged by mother alleging both the respondents were authors of the injuries inflicted on Balwant Singh. No doubt, parties were in inimical terms with regard to land lord and tenancy dispute, but that dispute is not so grave which may lead the parents to leave actual culprit and implicate falsely both the respondents in this case. Apart from that Gyan Kaur (PW/1) in her evidence without exaggeration only stated that Balwant Singh told that Dharmendra Mourya and Munna assaulted him with Gupti (knife). Virtually her previous statement is Ex.P/1 which is Dehati Nalsi (FIR). In that report also she reported that Balwant Singh told that Dharmedra Mourya and Munna stabbed knife on his stomach, therefore, she is not contradicting or exaggerating her statement in Court. So far omission with reference

to her evidence Ex.D/1 i.e., statement recorded under Section 161 of the Cr.P.C., is concerned, her explanation was correct and acceptable looking to her report Ex.P/1. So far as the evidence of Jaisingh PW/2 is concerned, omission with reference to Ex.D/2, his explanation is also true and acceptable considering the statement of his wife Gyan Kaur (PW/1). Ex.P/21 is the map proved by PW/10. The distance from the scene of occurrence and the witnesses were 65ft and 68 ft., respectively, therefore, the distance was not far so as to prove that they cannot see the respondents fleeing from there. Therefore, the whole evidence of Gyan Kaur PW/1 and Jaisingh PW/2 was not liable to be discarded on normal discrepancy and omission duly explained by the witnesses

20. Learned Court below in its judgment took also a ground for disbelieving the witnesses that at the place of occurrence when people gathered they did not tell anything to those persons. In the instant case, both the witnesses are mother and father of the deceased Balwant Singh and their son was badly injured, therefore, they were in hurry to take the injured to hospital, in these circumstances the natural course is that they will look for transport and immediately shift the injured to hospital and they did so, instead of wasting their time.

21. Dr. S.K. Tiwari (PW/8) also deposed that he examined the knife and gave his report (Ex.P/19-A) stating that the injury on the stomach of deceased had been caused by the knife sent for examination along with Ex.P/19. His evidence has not been challenged by the respondents. PW/17 Ratansingh Thakur in his

evidence proved that the knife at the instance of the respondent Dharmendra Mourya was seized and sent to Medical Officer for examination vide Ex.P/19.

22. So far as accused/respondent Dharmendra Mourya is concerned, following proved circumstances are existing.

1) He had inimical terms with parents of Balwant Singh.
2) He was found running from the place of incident where injured Balwant Singh was lying.
3) Balwant Singh told his mother and father i.e., PW/1 Gyan Kaur and PW/2 Jaisingh that Dharmendra Mourya and Munna had assaulted him. This evidence is admissible in evidence u/S.32 of the Indian Evidence Act.
4) Knife was recovered at the instance of respondent Dharmendra Mourya from vegetable field surrounded by fencing which was kept by him in a concealed condition and according to medical evidence, injury found on the body of deceased Balwant Singh could have been caused by this weapon.

23. So far as respondent Munna is concerned, following circumstances have been proved by the prosecution.

1) He was found running from the place of occurrence.
2) Balwant Singh told that Dharmendra Mourya and Munna had assaulted him.

24. Hon'ble the Apex Court in ***Subimal Sarkar Vs. Sachindranath Mandal and others, reported in 2003 (2) SCC***

566, has held that in criminal trial based on circumstantial evidence, it is necessary that links in the chain of circumstances should be proved and it has to establish all the links in the chain of circumstances so as to prove that in all probabilities it was only accused persons who could have committed the crime.

25. Learned court below on surmises and conjectures and on flimsy grounds rejected the evidence of Gyan Kaur (PW/1) and Jaisingh (PW/2) and also held prosecution case doubtful, therefore, the view taken by the trial Court so far respondent Dharmendra Mourya is concerned, is perverse and requires to be interfered with.

26. In the instant case, it is proved that Balwant Singh died as a result of stab injury caused by knife by stabbing in his stomach. Soon after the incident after receiving the injury Balwant Singh raised alarm and on hearing the cries mother and father i.e., PW/1 Gyan Kaur and PW/2 Jaisingh came out of the house and saw the respondents Dharmendra Mourya and Munna running from the place of occurrence and when they reached near Balwant Singh, he told that Dharmendra Mourya and Munna had assault ed him. Balwant Singh was taken to hospital, but on way he died and the Medical Officer after examining him in hospital declared him dead. Soon after his death intimation was sent by the Medical officer to Police Station. Police came to hospital and recorded first information report at hospital which corroborates the statement given by PW/1 Gyan Kaur . After report, on the next day knife was recovered at the instance of the respondent Dharmendra Mourya in a concealed condition from vegetable field surrounded by fencing.

Respondent Dharmendra Mourya had motive to kill Balwant Singh. Here all the circumstances form a complete chain and in all probability they prove that the respondent Dharmendra Mourya is the person who stabbed Balwant Singh in his stomach with an intention to cause his death.

27. So far as respondent Munna is concerned, he was found running from the place of occurrence and Balwant Singh told his parents that Dharmendra Mourya and Munna had assaulted him. Deceased Balwantingh had received only one injury and that too stab injury caused by knife and knife was seized at the instance of respondent Dharmendra Mourya. Therefore, respondent Munna has not caused any injury to deceased Balwant Singh. Munna has no inimical terms with deceased or his parents. To support that Dharmendra Mourya in furtherance of common intention of Munna stabbed Balwant Singh no evidence is available. Therefore, only because respondent Munna was found running from the place of occurrence and Balwant Singh also unveiled his name, it cannot be said that in furtherance of common intention of respondent Munna, Dharmendra Mourya stabbed Balwant Singh and killed him.

28. From the aforesaid discussion, it is established that Dharmendra Mourya with an intention to kill Balwant Singh stabbed him with knife in his stomach as a result of which Balwant Singh succumbed to injury, therefore, Dharmendra Mourya is guilty of committing the offence of murder of Balwant Singh punishable under Section 302 of the I.P.C.

29. So far as respondent Munna is concerned, it is not proved that in furtherance of common intention of respondent Munna and Dharmendra Mourya, Dharmendra Mourya has stabbed Balwant Singh by knife in his stomach. Therefore, respondent Munna is not guilty of committing the offence of murder of Balwant Singh with the aid of Section 34 of the I.P.C.

30. In the result, the appeal partly succeeds. So far as acquittal of respondent Munna is concerned, the judgment and order passed by the leaned trial Court is maintained. So far as respondent Dharmendra Mourya is concerned, appeal succeeds. Acquittal of Dharmendra Mourya is quashed; instead thereof he is guilty of committing the murder of Balwant Singh punishable under Section 302 of the I.P.C.

31. At this stage, the judgment for a while is postponed for hearing the respondent Dharmendra Mourya on the question of sentence.

Sd/-
V.K. Shrivastava
Judge

Sd/-
Satish K. Agnihotri
Judge

Raju

Later on

32) Heard on the question of sentence.

33) Taking into consideration all the facts and circumstances of the case, respondent Dharmendra Mourya is sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/-, (Rupees one thousand) in default of payment of fine to further undergo rigorous imprisonment for 6 (six) months, for